

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF FLORIDA
GAINESVILLE DIVISION

IN RE:

PRIORIA ROBOTICS, INC.

CASE NO.: 18-10018-KKS

CHAPTER: 7

Debtor.

CONDOR AERIAL, LLC,

ADV. NO.: 19-01002-KKS

Plaintiff,

v.

NOVUS CAPITAL GROUP, LLC,

Defendant.

ORDER GRANTING, IN PART, DEFENDANT'S *MOTION FOR*
***SUMMARY JUDGMENT* (DOC. 39)**

THIS MATTER is before the Court on Defendant's *Motion for Summary Judgment* ("Summary Judgment Motion," Doc. 39). Having reviewed the Summary Judgment Motion and supporting Affidavit, as well as the Amended Complaint and applicable law, the Court finds that Defendant is entitled to summary judgment in its favor as a matter of law on Counts I and II of the Amended Complaint.

PROCEDURAL HISTORY

Debtor, Prioria Robotics, Inc. filed a Chapter 11 petition on January 29, 2018;¹ it voluntarily converted its case to Chapter 7 on February 14, 2018.² Defendant, Novus Capital Group, LLC, filed a Proof of Claim on July 18, 2018 asserting a secured claim in the amount of \$539,074.87 and an amended claim on February 6, 2020 (“Claim 27”).³ On August 31, 2018, Plaintiff, Condor Aerial, LLC, another creditor, filed, and then withdrew, an objection to Defendant’s Proof of Claim.⁴

Plaintiff commenced this adversary proceeding on January 19, 2019; it filed its Amended Complaint (“Complaint”) on May 9, 2019.⁵ Plaintiff asserts that Claim 27 is unenforceable under 11 U.S.C. § 502(b)(1) or in the alternative that the claim should be equitably subordinated under 11 U.S.C. § 510(c)(1).

¹ *In re Prioria Robotics, Inc.*, Case No. 18-10018, Doc. 1, *Official Form 201 – Voluntary Petition for Non-Individuals Filing for Bankruptcy* (Bankr. N.D. Fla. Jan. 29, 2018).

² *In re Prioria Robotics, Inc.*, Case No. 18-10018, Doc. 45, *Order Converting Case to Chapter 7* (Bankr. N.D. Fla. Feb. 14, 2018).

³ *In re Prioria Robotics, Inc.*, Case No. 18-10018, *Official Form 410 – Proof of Claim 27-1* (Bankr. N.D. Fla. July 18, 2018). In its Amended Claim, Defendant explains that it does not assert any new claims but explains the basis of its original claim with more particularity, *In re Prioria Robotics, Inc.*, Case No. 18-10018, *Official Form 410 – Proof of Claim 27-2, Part 2* (Bankr. N.D. Fla. Feb. 6, 2020).

⁴ *In re Prioria Robotics, Inc.*, Case No. 18-10018, Doc. 156, *Condor Aerial, LLC’s Objection to Proof of Claim and Incorporated Memorandum of Law*; and Doc. 173, *Condor Aerial, LLC’s Notice of Withdrawal of Objections to Novus Capital Group, LLC’s [sic] Proof of Claim* (Bankr. N.D. Fla. Sept. 24, 2018).

⁵ Docs. 1, 24.

In its Summary Judgment Motion, Defendant maintains that Plaintiff (1) lacks standing to object to Claim 27; and (2) has offered no evidence to support its allegations that Claim 27 should be disallowed as invalid or the result of a fraudulent transfer. The Court granted Plaintiff's request for an extension of time to file a response to the Summary Judgment Motion; that time has expired, and Plaintiff has filed no response.⁶

THE MATERIAL UNDISPUTED FACTS

Claim 27, as amended, includes a summary detailing the basis for Defendant's claim.⁷ The summary is corroborated by the Affidavit in support of Defendant's Summary Judgment Motion. In short, the loan between Defendant and the Debtor was documented or about July 9, 2015 and was funded via wire transfer.⁸ Debtor made some payments toward the loan,⁹ and on July 9, 2015, some creditors of the Debtor subordinated

⁶ *Order Granting Plaintiff, Condor Aerial, LLC's Motion for Extension of Time to Respond to Motion for Summary Judgment (Doc. 66)*, Doc. 67. Defendant amended Claim 27 in February of 2020, well after Plaintiff filed its Amended Complaint. Because Claim 27, as amended, provides significantly more information than did original Claim 27, it is possible that Plaintiff has simply abandoned this adversary proceeding and its objection to Defendant's claim.

⁷ *In re Prioria Robotics, Inc.*, Case No. 18-10018, *Official Form 410 - Proof of Claim 27-2* (Bankr. N.D. Fla. Feb. 20, 2020).

⁸ Docs. 24, 24-8, 39 and 39-1.

⁹ Docs. 24, Doc. 39 and 39-1.

their loans to that of Defendant.¹⁰ Plaintiff has submitted no evidence in opposition to the Summary Judgment Motion, and attached nothing to prove its claims to its Amended Complaint, so these material facts are unrefuted.

SUMMARY JUDGMENT STANDARD

Summary judgment is governed by Fed. R. Civ. P. 56, made applicable by Fed. R. Bankr. P. 7056. The Court shall grant summary judgment if there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.¹¹ The moving party bears the initial burden of establishing that “there are no genuine issues of material fact that should be decided at trial.”¹² Once the initial burden is satisfied, “the nonmoving party must ‘go beyond the pleadings and by her own affidavits, or by the depositions, answers to interrogatories, and admissions on file, designate specific facts showing that there is a genuine issue for trial.’”¹³ “Conclusory allegations by either party, without specific supporting facts, have no probative value.”¹⁴ “Facts are

¹⁰ Docs. 24, 39 and 39-1.

¹¹ Fed. R. Civ. P. 56(a) as made applicable by Fed. R. Bankr. P. 7056.

¹² *SunTrust Bank v. Mitchell (In re Mitchell)*, 496 B.R. 625, 631 (Bankr. N.D. Fla. 2013) (citing *Clark v. Coats & Clark, Inc.*, 929 F.2d 604, 606 (11th Cir. 1991)).

¹³ *Id.* (citing *Hines v. Marchetti*, 436 B.R. 159, 164 (M.D. Ala. 2010)).

¹⁴ *In re Hintze*, 525 B.R. 780, 784 (Bankr. N.D. Fla. 2015).

material if they ‘might affect the outcome of the suit under the governing law’ and disputes over material facts are genuine if ‘the evidence is such that a reasonable jury could return a verdict for the nonmoving party.’”¹⁵

ANALYSIS

Defendant cites no binding authority to support its argument that Plaintiff does not have standing to object to its claim; Plaintiff is a party in interest within the meaning of 11 U.S.C. § 502(a).

Defendant claims Plaintiff lacks standing to object to Claim 27 because the Chapter 7 Trustee is the proper party to object to claims, Plaintiff has not demanded that the Trustee do so, and the Trustee has not refused such a demand. Defendant cites *In re Walker*, an unpublished opinion from the Eleventh Circuit, and this Court’s ruling in *In re Cannon*.¹⁶ Those authorities are inapposite.

Defendant misstates *Walker* by attributing certain language to the Eleventh Circuit that was written by the district court. The district court in *Walker* stated: “[i]t is also the case in the Eleventh Circuit, like the majority of courts elsewhere, that when there is a Chapter 7 trustee, other parties in interest do not have standing to object to claims, unless

¹⁵ *Id.*

¹⁶ *In re Cannon*, 15-30451-KKS, 2017 WL 3508772 (Bankr. N.D. Fla. June 5, 2017); and *Walker v. Lundborg*, 06-80810-CIV, 2007 WL 9701963 (S.D. Fla. Aug. 17, 2007), *aff’d sub nom. In re Walker*, 309 Fed. Appx. 293 (11th Cir. 2009). *See* Doc. 39, pp. 5-6.

the trustee has refused after request to object to the claim and the court has then authorized the party in interests to object.”¹⁷ Although the district court’s wording implies binding Eleventh Circuit authority on this subject, the Eleventh Circuit has made no such ruling. Further, the district court in *Walker* did not rely on or cite to any such binding authority.

Of the four (4) cases cited by the district court in *Walker*, only one is from a bankruptcy court within the Eleventh Circuit: *In re Sinclair’s Suncoast Seafood, Inc.*¹⁸ In that case, the Bankruptcy Court for the Middle District of Florida held that the debtor’s former shareholder did not have standing to object to the IRS’s claim against the corporate debtor because he had not shown an injury that would be appropriately addressed by the claims objection process.¹⁹ The Middle District’s ruling in *Sinclair’s Suncoast Seafood* is not binding authority in this District. Defendant did not cite, and this Court has not located, any binding

¹⁷ *Walker*, 2007 WL 9701963 at *9.

¹⁸ *In re Sinclair’s Suncoast Seafood, Inc.*, 140 B.R. 588 (Bankr. M.D. Fla. 1992).

¹⁹ *Id.* at 591. In its analysis, the court in *Sinclair’s Suncoast Seafood*, citing the 1983 Advisory Committee Note to Fed. R. Bankr. P. 3007, stated: “[i]n a Chapter 7 case in order for a creditor to object to another creditor’s claim, the objecting creditor must establish that the trustee was requested to object to the claim but refused to do so and the objecting creditor must establish that if the objection to claim were sustained some benefit would redound to the estate.” *Sinclair’s Suncoast Seafood, Inc.*, 140 B.R. at 592.

authority in support of its argument that Plaintiff has no standing to object to its claim under 11 U.S.C. § 502(a).

Section 502(a) of the Code provides, in pertinent part, that “[a] claim or interest, proof of which is filed under Section 501 of this title, is deemed allowed, unless *a party in interest* . . . objects.”²⁰ The Eleventh Circuit has determined that all creditors of a debtor are parties in interest.²¹ In *In re Cannon*, this Court referred specifically to the “party in interest” language in § 502(a).²² Although this Court remarked that “in a Chapter 7 case the Chapter 7 Trustee is *usually* the proper party to review and object to claims,” this Court did not, as Defendant implies, rule that only the trustee has standing to object to claims.²³

Plaintiff is a creditor with status as a party in interest as that term is defined in the Code. For that reason, Defendant’s Summary Judgment Motion based on lack of standing is due to be denied.

²⁰ 11 U.S.C. § 502(a) (2020) (emphasis added); 4 Collier on Bankruptcy P 502.02 (16th ed. 2020).

²¹ *Wallis v. Justice Oaks II, Ltd. (In re Justice Oaks II, Ltd.)*, 898 F.2d 1544, 1553 (11th Cir.), *cert. denied*, 498 U.S. 959 (1990).

²² *In re Cannon*, 15-30451-KKS, 2017 WL 3508772, at *1 (Bankr. N.D. Fla. June 5, 2017).

²³ *Id.* (emphasis added). In *Cannon*, this Court found that the objecting party had no standing because he was not a creditor and could not prove party-in-interest status because he had no pecuniary interest in the outcome of the case. *Cannon*, 2017 WL 3508772, at *1.

Defendant's Summary Judgment Motion is supported by evidence of the undisputed facts; Plaintiff's Complaint is not.

In the Complaint, Plaintiff asserts that Claim 27: (1) is not *prima facie* valid because as originally filed it did not include an itemized list of interest, other charges, or payments made (Count I); and (2) is invalid or should be equitably subordinated because it is based on a fraudulent transfer under Florida law (Count II). The Complaint contains conclusory allegations but no substance: the facts alleged are unsupported by any evidence and are not sufficient to override Defendant's *prima facie* claim.²⁴

In relevant part, Fed. R. Bankr. P. 3001 requires that a proof of claim secured by an interest in the Debtor's property "conform substantially to the appropriate Official Form," and, if the claim "is based on a writing, [include] a copy of the writing."²⁵ A proof of claim that complies with Rule 3001 constitutes *prima facie* evidence of the claim's validity.²⁶ Defendant's Proof of Claim complies with Rule 3001's

²⁴ Other than its Complaint, Plaintiff has filed only motions in this adversary proceeding. In one of its motions, Plaintiff admitted that additional discovery and information was "necessary to Condor's defense against Novus' Motion for Summary Judgment." *Affidavit in Support of Plaintiff, Condor Aerial, LLC's Motion for More Discovery* at Doc. 47-1, Motion at Doc. 47. To date, Plaintiff has provided no such "information."

²⁵ Fed. R. Bankr. P. 3001(a), (c)(1).

²⁶ Fed. R. Bankr. P. 3001(f).

requirements. For this reason, the claim is *prima facie* valid. Any objection to such a claim must be overruled unless supported by evidence sufficient “to negate a fact set forth in the proof of claim.”²⁷ Plaintiff has failed to provide any evidence sufficient to negate the facts in Claim 27.

Plaintiff has also failed to provide any evidence in support of its assertion that Claim 27 should be disallowed or subordinated because it arose from a fraudulent transfer. Although Plaintiff articulated the elements of a fraudulent transfer claim in Count II of its Complaint, these blanket allegations, with no evidence or proof, cannot withstand Defendant’s Summary Judgment Motion.

For the reasons stated, it is

ORDERED: Defendant’s *Motion for Summary Judgment* (Doc. 39) is granted in part and denied in part as follows:

1. The portion of the Summary Judgment Motion that asserts Plaintiff lacks standing is DENIED.
2. Defendant’s Summary Judgment Motion is GRANTED as to Plaintiff’s objections to Defendant’s Claim, contained in Counts I and II of the Amended Complaint (Doc. 24).

²⁷ *In re Walston*, 606 F. App’x 543, 547-48 (11th Cir. 2015) (citing *In re Garner*, 246 B.R. 617, 623 (B.A.P. 9th Cir. 2000)). *See also In re Foster*, 500 B.R. 197, 203 (Bankr. N.D. Ga. 2013).

3. The hearing on the Summary Judgment Motion, currently scheduled for July 14, 2020, and the Status Hearing currently scheduled for August 25, 2020 (Doc. 69) are CANCELED.

DONE and ORDERED on July 10, 2020.

A handwritten signature in black ink, appearing to read 'K. Specie', is written over a horizontal line.

KAREN K. SPECIE
Chief U.S. Bankruptcy Judge

cc: all parties in interest

Counsel for Defendant is directed to serve a copy of this Order on all interested parties and file proof of service within three (3) days of this Order.